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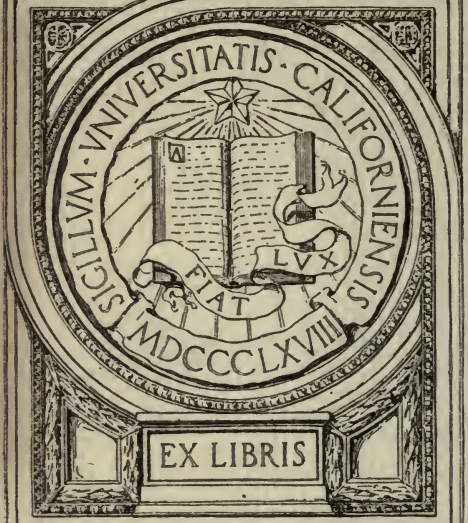

Christian Science Healing Not Medical Practice

Judge Clifford P. Smith

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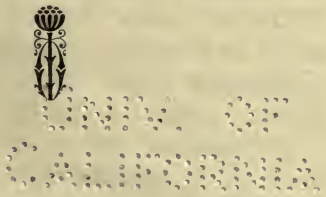
Christian Science Healing
Not Medical Practice

[A paper prepared for Commissions to Revise Statutes in Ontario and Ohio]

BY JUDGE CLIFFORD P. SMITH



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WITHDRAWN

CHRISTIAN SCIENCE HEALING NOT MEDICAL PRACTICE

CHRISTIAN SCIENTISTS have always spoken of medical doctors with respect. In the authorized literature of Christian Science it would be difficult to find an uncharitable or impertinent comment on any honest effort to prevent or cure disease. It would be impossible to find anything like the abusive attacks that medical representatives have made on Christian Science in Ohio and Ontario. It is necessary to say, however, that the medical profession, or that part of it which delights to speak of "cults and sects," is bent on getting a statutory monopoly of all services in relation to health. It is attempting to obtain the passage of statutes that would ultimately put the holders of that monopoly on the public pay roll and compel all other people to obey their orders. In short the medical profession, or a certain part of it, is determined to become a ruling class and to have all other people for its subjects.

Proof of these statements is not difficult to find in the published proceedings of medical organizations. No small amount of it has been furnished

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by and during the attempts of such organizations to stop the practice of Christian Science in Ohio and Ontario. And now that commissions to revise the medical acts of Ohio and Ontario have been appointed, the Christian Scientists thereof wish to present the foregoing and the following reasons why the statutes to be recommended should recognize these rights: (1) freedom from any statutory monopoly of all services for the benefit of health; (2) freedom from any statutory regulation that would be unreasonable or unnecessary; (3) entire freedom for the practice of the Christian religion. Such rights are recognized by any just or wise conception of government.

Concerning the practice of medicine, the first thing to be noticed is that it is based on diagnosis. "It is impossible to dissociate diagnosis from the practice of the art of healing by any physical, medical, mechanical, hygienic, or surgical means" (People *vs.* Jordan, 172 Cal. Rep. 391). "This is the most important and difficult element in the practice of medicine" (New International Encyclopedia, second edition, Vol. VI, p. 757). In the case of People *vs.* Allcutt, 117 App. Div. Rep. 546, the appellate division of the supreme court of New York declared that diagnosis is "the very corner stone of successful medical practice."

This fact is not denied by the medical profes-

sion; it is admitted. For instance, the *Journal of the American Medical Association,* speaking editorially in its issue of April 24, 1915, said, "Without a correct diagnosis, any form of treatment is guesswork and unscientific." This statement was made for the purpose of denying the efficacy of any treatment not based on diagnosis. It was aimed particularly at Christian Science. Virtually, however, it admitted one of the great advantages possessed by Christian Science, as well as one of the great disadvantages and dangers of the medical and surgical system, for the fact is that a medical diagnosis is about as uncertain as anything in human affairs. This fact is easily proved by the admissions of prominent physicians.

In December, 1913, numerous American newspapers published an article by Roger W. Babson, a very well-known statistician, in which he dealt with medical diagnoses. In the course of that article Mr. Babson quoted from a report on post-mortem examinations made by a committee of the New York Academy of Medicine, in which Dr. Horst Oertel, director of the Russell Sage Institute of Pathology, furnished the following percentages of correct diagnoses: "It is apparent that only a few of the most evident diseases exceed 75 per cent in the hands of an experienced diagnostician. Many important diseases fall below 50

per cent in recognition, and some even below 25 per cent."

In November, 1915, Charles H. Mayo, M.D., of Rochester, Minn., who is now president of the American Medical Association, delivered an address before the Chicago Medical Society in which he said, speaking of one of the best known hospitals: "A report from the Bellevue Hospital shows that in over 50 per cent of all autopsies, extending over a considerable period of time, the diagnoses were incorrect, both as to medical and surgical cases." This statement was reported in the Chicago *Medical Recorder* of December 15, 1915.

A few years ago Richard C. Cabot, M.D., of Boston, one of the best known physicians in the United States, compared the pathologic conditions discovered by post-mortem examinations with the diagnoses made during life in the cases of three thousand patients who had died at the Massachusetts General Hospital. These cases included twenty-eight diseases, and the percentage of mistaken diagnoses varied from five in one class of cases to eighty-four in another, the average of mistaken diagnoses in the twenty-eight kinds of cases being 46.5 per cent.

The comparisons thus made were the subject of an article by Doctor Cabot in the *Journal of the*

American Medical Association for December 28, 1912, and of an article by Frederick S. Lee, Ph.D., professor of physiology in Columbia University, in the same periodical for December 12, 1914. In the latter article Professor Lee made the following pertinent comment: "The average of mistaken diagnoses in these twenty-eight diseases is 46.5 per cent, or nearly one half, and this in one of the leading hospitals of the country, where all available aids to correct diagnoses ought to be had."

In the same article Professor Lee quoted Professor Orth, director of the Pathological Institute in Berlin, as saying that "of all appendixes that have been submitted to him for examination by conservative surgeons with the clinical diagnosis of appendicitis, as many as 17 per cent showed *no disease.*"

It must be added that the dangers of medical and surgical practice are not due alone to its dependence on the uncertainties of diagnosis. There are other reasons why the people should not be limited to what that system furnishes, and no attempt will be made to state all of them here, but the following item is offered by way of further illustration.

At the annual meeting of the American Medical Association in June, 1917, Arthur Dean Bevan,

M.D., of Chicago, read a paper on the "Problem of Unnecessary Operations and of Incompetent Surgeons," a report of which was published in the *Journal* of that Association, July 21, 1917. In the course of this paper, Doctor Bevan said:—

"This problem should be attacked without any sensationalism, certainly without any unnecessary publicity, and should be looked on as a piece of house cleaning that should be done by the American Medical Association. . . . I believe that the great majority of operating surgeons in this country are competent, and that the vast proportion of operations performed are necessary and desirable. On the other hand, those who are in touch actively with surgical therapy, who see a large number of surgical cases and who come in contact with a large number of men doing surgical operations, cannot but be impressed with the fact that there is a considerable number of operations being performed in this country that are unnecessary and unwarranted, and that there is a considerable number of men operating who are not qualified to do the work. My impression is that this condition is due to three causes,—ignorance, dishonesty, and bad judgment, sometimes bad judgment amounting almost to an obsession. . . . This problem of unnecessary operations and incompetent surgeons is a serious matter both for the medical profession and for the public."

As conclusions from these admissions by prominent physicians and surgeons and from the facts

of common knowledge, the following propositions are respectfully submitted. *The practice of medicine is not safe and certain enough to be a natural monopoly. If it were, it would not need to be imposed on the public by statutes. And since the practice of medicine is not safe and certain enough to be a monopoly by the natural law of demand and supply, giving it a statutory monopoly of all service in the field of health would be a monstrous violation of human rights. So long as more than one system of therapeutics is known to and preferred by intelligent people, they have the right to choose whichever system they prefer.* Moreover, as the Texas court of civil appeals declared in the recent case of Waldschmit *vs.* City of New Braunfels, 193 S. W. Rep. 1077: "Religious liberty is a fundamental right, not derived from, but protected by, the Constitution."

In this connection it is to be recalled that the profession of medicine was just as modern, just as progressive, and just as scientific, according to its claims, when it adhered to theories and practices it subsequently abandoned and condemned as it is to-day. A large part of the medical profession was no less contemptuous of nonmedical opinions, no less intolerant of dissent, and no less opposed to Anglo-Saxon conceptions of liberty when medical practice withheld ice and water from

patients suffering with fever and thirst, and instead gave them calomel (that is, mercurous chloride, a drug obtained from metallic mercury and corrosive sublimate), than a large part of the same profession has been since or is now. Who knows but that the present practice of fighting poison with poison and disease with disease may soon be regarded as a matter of equally strange history?

Before turning from the statements of medical doctors, it will be a pleasure to quote several that confirm the propositions just submitted.

In its issue of June, 1912, *The Medical Brief* of St. Louis said editorially: "Only the most settled and established truths and principles of action are proper subjects for legislation; and everybody knows that in medical science these are exceedingly few and far between. Hence, as we have said, there is a strong element of reasonableness in the appeal made to public sentiment by the cults and sects against the enactment and enforcement of medical opinions into laws, however well intentioned such attempts may be."

In September, 1914, before the Utah State Medical Association, a paper was read by Frederick R. Green, A.M., M.D., secretary of the Council on Health and Public Instruction of the American Medical Association. In the course of this paper Doctor Green said:

"Another error into which we have fallen as a profession is the tendency to regard the medical profession as a divinely authorized class, whose sacred and distinctive function is the protection of the people, either with or without their consent. It is difficult to understand on what rational basis such a belief can rest in a scientific profession like ours. The medical profession is recruited from the same class as that which furnishes the lawyers, judges, ministers, teachers, and business men of our country. The men who go into medicine are neither wiser, nor more unselfish, nor more upright, nor more infallible in their judgment than those who make up any other class of professional men. Why should we regard ourselves as of superior mold, or why expect our opinions or views to be accepted on any different basis from those of other men of equal intelligence, except in so far as we are able to justify our judgment? Yet too often medical organizations, as well as individual physicians, have taken the position that they were the courts of last resort; that it was their special function to dictate the terms of public legislation, and that it was the duty of the public to accept their decisions and acquiesce in their judgment."

In February, 1917, at a Congress on Medical Education, Public Health, and Medical Licensure in Chicago, a paper was read by David A. Strickler, M.D., of Denver, president of the Federation of State Medical Boards of the United States. In

that paper Dr. Strickler described the statute to regulate the practice of medicine which he favors as follows: "The theory is that no one basing his treatment on a pretended or actual physical diagnosis should be permitted to treat disease by any method or means, who does not first show knowledge fundamental to its recognition. A definite distinction is made between schools of physical healing which base their practice on physical diagnosis, and the schools of spiritual healing, healing by prayer, in which no pretense of physical diagnosis is made, but in which the healing art is practiced as the tenet of the church. The most familiar example of the latter is found in the denomination of Christian Science. A dispassionate view exempts its practitioners from the educational standard of licensure applied to schools of physical healing." Dr. Strickler reiterated this distinction when he stated his conclusions from an experience of more than a quarter of a century with medical legislation, and one of his conclusions was expressed as follows: "That in the present chaotic state of therapeutics, using the word in a broad sense, the state is not concerned in the relative scientific value of different methods of treatment."

Coming now to utterances of persons versed in jurisprudence, including reasons given for the de-

cisions of courts, it will be orderly to mention first that the laws of England which regulate the offering of services to the public in behalf of health only forbid deception in regard to qualifications. They do not even limit the practice of medicine to licensed physicians (Halsburg's Laws of England, Vol. XX, p. 343). This fact gives special significance to the conclusion expressed by Charles A. Boston, Esq., president of the American Association of Medical Jurisprudence, as reported in the *New York Medical Times* of April and May, 1916. In his address as president of that Association, Mr. Boston reviewed medical legislation in the United States, compared it to some extent with the medical legislation of England, and concluded as follows:

"One cannot read such a mass of legislation with a view to philosophic criticism without reaching the conclusion that much of it is ill advised, emotional, unwise, ill considered, and unnecessarily severe. It seems to me to proceed upon a doubtful theory, and to regard that as certain and fixed which is constantly progressive and changing. It provokes the question whether the public need requires such drastic legislation when so many of our well-inclined, if mistaken, citizens believe they are being oppressed. If the protection of the public demands it, then let it proceed! But if the actual protection of the public does not

demand it, then could we not afford to be slightly more tolerant? Indeed, is it not possible to consider the feasibility of the English system of letting all who will run, but to educate the public in a knowledge of those who have been duly prepared and those who have not. Personally I have an open mind, and stand for no heresy, schism, sect, or irregular school. I am looking at the subject solely from the standpoint of historic and constitutional criticism. In this light it appears to me that there is much to condemn in the theory of our laws. I have in mind the lessons irresistibly inculcated by the illustrations in Andrew D. White's 'Some Chapters in the Warfare of Science.' And I doubt whether the public health requires the legislative mandate for its protection to any greater extent than the public morals require the establishment of a state church. I see danger that legislative interference may retard the growth of medical science, and I doubt if medical science requires legislative protection to the extent that it now demands and gets."

The Hon. Elihu Root, one of the most eminent of American lawyers and public men, does not need an introduction. The following observation by him, though made with reference to American government, is equally applicable wherever Anglo-Saxon institutions prevail, and it is pertinent to the present inquiry. The following quotation is from page 540 of his published "Addresses on Government and Citizenship":

"The justification of all laws and customs which restrain human conduct is that they are necessary and appropriate for the preservation of the liberty of others. Whatever law passes beyond that limit and seeks to impose upon the individual the ideas of others as to what his conduct should be, whether to subserve the interests of others or to conform to their prejudices or to their ideas of propriety or wisdom, even though those others may constitute an overwhelming majority of the whole community, is a violation of the principles upon which our government was formed; it is not the just exercise of governmental power, but is essentially tyranny. The test is difficult of application. The incidence and the ultimate effect of law are often indirect and obscure. They depend on a multitude of conditions imperfectly known and subject to controversy. The highest intelligence and the broadest knowledge are needed for the application of the test; but upon a sincere and unremitting effort that it shall be applied to every step of the development of our law depends the question whether that development shall destroy or shall deepen and strengthen the foundations of free government."

A scholarly lawyer and teacher of law, who wrote a valuable book on an unusual subject, was Professor Christopher G. Tiedeman, and the following quotation from Sect. 88 of his "State and Federal Control of Persons and Property" is pertinent:

"In the practice of medicine, an attempt has often been made by the old school of medicine, the school of allopathy, to bring homeopathy into legal disrepute and to deny to practitioners of that school equal privileges before the law; but the police power of the state can never be exercised in favor of or against any system of medicine. The police power can be brought to bear upon quacks and disreputable practitioners, to whichever school they may belong, but when reputable and intelligent members of the profession differ in theories of practice, the state has no power to determine which of them, if either, is wrong."

When the Hon. Charles S. Thomas, now United States senator from Colorado, was governor of that state, he vetoed a bill designed to give three schools of medicine a monopoly. In the course of his veto message he said:

"The bill, like all kindred forms of paternalism, assumes that the citizen cannot take care of himself. The state must lead him as a little child, lest he fall into trouble unawares. He must be guarded and chided, limited here and licensed there, for his own protection. Such a system, born of the union of church and state, crumbles into ashes in the crucible of experience. It cannot flourish, though disguised in the garments of an alleged public necessity. The privilege of choosing one's own physician is a positive essential to the public health. Yet this bill assumes

to thrust the coarse machinery of the criminal law into one of the most sacred relations of human life, to drag the chosen physician, if unlicensed, from the sick-couch to the prison cell, and to substitute for him some one who, however exalted and honorable, may not command the confidence or secure the sympathy of his patient.

"These comments are not extreme, for it must be remembered that those who believe in and patronize the various arts of healing that are ostracized by this bill form a very large part of every community, nor are they confined to the ignorant and superstitious portions of society. They number in their ranks thousands of the most refined, intelligent, and conscientious people. They recognize in many modern forms of relief to the suffering a religious or spiritual element that appeals to their best and tenderest sympathies. The benefits they claim and the cures they narrate are not imaginary. Shall the government enact by statute that these people shall not longer enjoy their benefits or put them into daily practice? Shall it officially declare these people to be criminally wrong and the three schools legally right? By what authority does it so declare?

"A distinguished physician of Massachusetts [Professor William James] has recently declared with force that 'the commonwealth has no right to a medical opinion and should not dare to take sides in a medical controversy.' It would be as consistent to take sides in a theological or philosophical discussion. The one

would be condemned by all men; the other is equally foreign to the province of government."

It has been said that Joel Prentiss Bishop, by sheer weight of reason, was able to do more for the betterment of American criminal law than has ever been accomplished by any other person, hence his conclusion regarding the subject now under consideration is pertinent and weighty. It is to be found in Section 988a of "Bishop on Statutory Crimes," and is as follows:

"It is proper, therefore, to compel by legislation, and the more stringent the better, all who offer or render services in the way of medical help to abstain from every false holding out as to their education, competency, or society connections; but not worthy to be tolerated to preclude any human being from proposing to do, or doing, honestly and under no untrue pretensions, what he can for the sick, or a sick man from employing whatever well-meant offices he chooses."

Although American courts may examine the constitutional validity of statutes, they do not hold that a statute is invalid because it is unjust or unwise; hence most medical acts that have been attacked as unconstitutional have been upheld. Nevertheless, some of the decisions of American courts, particularly the reasons given for the decisions, are pertinent to the present inquiry, and

should be persuasive with legislatures or legislative commissions. For instance, in the case of Hayden *vs.* State, 81 Miss. Rep. 291, 95 Am. St. Rep. 471, the supreme court of Mississippi gave the following as its reason for refusing to put a monopolistic interpretation on the medical act of that state: "The world greatly needs and may demand that nothing good or worthy shall be excluded from its use or enjoyment."

In the case of Nelson *vs.* State Board of Health, 22 Ky. Law Rep. 438, 50 L. R. A. 383, the highest court of Kentucky was asked to put a monopolistic construction on the medical act of that state, and its conclusion as well as the reasons for it were thus stated: "Taking the statute as a whole, we do not think that this was within the legislative intent, or that the act was designed to do more than regulate the practice of medicine by physicians and surgeons. . . . Otherwise this section would be made to include those not provided for in the preceding section, and the effect of the act would be, not to protect the people of this state from the unscientific practice of medicine, but to deny to the sick all ministrations not gratuitous, unless by registered physicians. Thus construed, the act would be for the protection rather of the doctors of the state than the people."

In the case of State *vs.* McKnight, 131 N. C.

Rep. 717, 59 L. R. A. 187, the supreme court of North Carolina had to construe the medical act of that state, and its conclusion was thus stated: "The state has not restricted the cure of the body to the practice of medicine and surgery—'allopathy' as it is termed—nor required that, before anyone can be treated for any bodily ill, the physician must have acquired a competent knowledge of allopathy and be licensed by those skilled therein. To do that would be to limit progress by establishing allopathy as the state system of healing, and forbidding all others. This would be as foreign to our system of government as a state church for the cure of souls."

A later case in the same court (State *vs.* Biggs, 133 N. C. Rep. 729, 64 L. R. A. 139), particularly the judgment of Chief Justice Walter Clark, a public man of considerable reputation, has received wide recognition by American judges and legislators. In the course of his opinion Chief Justice Clark said: "This is a free country, and any man has a right to be treated by any system he chooses. The law cannot decide that any one system shall be the system he shall choose. If he gets improper treatment for children or others under his care, whereby they are injured, he is liable to punishment; but whether it was proper treatment or not is a matter of fact, to be settled

by a jury of his peers, and not a matter of law, to be decided by a judge, nor prescribed beforehand by an act of the legislature. . . . All the law can do is to regulate and safeguard the use of powerful and dangerous remedies, like the knife and drugs, but it cannot forbid dispensing with them. When the Master, who was himself called the good Physician, was told that other than his followers were casting out devils and curing diseases, he said, 'Forbid them not.' "

In the case of Eastman *vs.* State, 109 Ind. Rep. 278, the supreme court of Indiana said: "It is within the power of the legislature to enact such laws as will protect the people from ignorant pretenders and secure them the services of reputable, skilled, and learned men, although it is not within the power of the legislature to discriminate in favor of any particular school of medicine. When intelligent and educated men differ in their theories, the legislature has no power to condemn the one or approve the other, but it may require learning and skill in the school of medicine which the physician professes to practice."

In the case of State *vs.* Smith, 25 Idaho Rep. 541, the supreme court of Idaho reviewed the conviction of an osteopathic physician charged with manslaughter by negligence, whose conviction depended largely on the testimony of "regu-

lar" physicians as to what they would have done. Regarding this evidence and the theory of the prosecution generally, the court said: "These are times of advanced science and liberal thought, when every person may think and act for himself. Every community has its multitude of beliefs and modes of treatment of diseases and human ailments, and every citizen is absolutely free to adopt, believe, and employ anyone he pleases. If the results are not what he would wish or the rest of the community think they ought to be, he can nevertheless not be hauled into court and have his method of treatment or school of thought tested by the disciples or experts of some other school or belief."

In the case of United States *vs.* Johnson, 221 U. S. Rep. 488, as a reason for rejecting a proposed construction of an act concerning the labeling of medicines, the United States Supreme Court declared that for the government to establish criteria where opinions are so far apart as they are with respect to the curative value of medicines would be "to distort the uses of its constitutional power."

In the case of American School of Magnetic Healing *vs.* McAnnulty, 187 U. S. Rep. 94, having to construe an act against using the mails to defraud, the same court summed up the reason for

its decision as follows: "As the effectiveness of almost any particular method of treatment of disease is to a more or less extent a fruitful source of difference of opinion, even though the great majority be of one way of thinking, the efficacy of any special method is certainly not a matter for the decision of the postmaster-general within these statutes relative to fraud."

Again, in the recent case of Crane *vs.* Johnson, 242 U. S. Rep. 339, the same court upheld the medical act of California against the contention that it is unconstitutional because it does not require an examination or license for persons who treat the sick by means of prayer, but does require examination and license for other drugless practitioners. The court held that the distinction of the statute, between prayer or the practice of religion and other methods of drugless healing, is not arbitrary but is reasonable and valid. The same statute was construed and upheld by the supreme court of California in the case of People *vs.* Jordan hereafter cited.

In the case of Louisiana State Board *vs.* Charpentier, 140 La. Rep. ——, 73 So. Rep. 248, the supreme court of Louisiana upheld the validity of the medical act of that state, and observed as a reason for one of its provisions or exceptions, that "the practice of Christian Science, or the religious

tenets of any church, is a spiritual or psychological matter which should, perhaps, be left to the practitioners and their patients."

In the case of People *vs.* Jordan, 172 Cal. Rep. 391, the supreme court of California upheld a statute containing substantially the same exception and stated its reasons more at length, as will appear from the following excerpts:

"Coming to the exempted class of drugless healers, namely, those who treat by means of prayer, here too there exists an obvious ground for the classification. The treatment practiced by many, though not all, of the drugless practitioners is by manipulation of the bones and kneeding of the muscles and tissues of the person treated. It is apparent that without a proper knowledge of the human body, its organs and functions thereof, or lack of skill, grave consequences to the patient might follow as a result of their treatment. Not so, however, as to one who in prayer invokes divine power to afford relief to one afflicted by disease. The possession of the prescribed knowledge and skill, without which the chiropractic, osteopath, and neuropath is denied the right to practice his treatment, in no wise renders the prayers of one thus treating bodily ills more efficacious in the curing of disease; nor can it be said the prayer of an illiterate person may, in the consequences to the subject thereof, be more productive of harm or less beneficial than that of one possessing the learning and skill of an educated

physician. To our minds it is obvious that no reason exists for requiring the class engaged in treatment by prayer to possess the knowledge and skill required of others engaged in drugless treatment. The ground for the classification is as obvious as is the distinction between physicians and surgeons on the one hand, and drugless practitioners on the other, and as to each of which classes a different rule applies. That the legislature has the right to establish such classification and exempt one class from the operation of a general law, where the same is founded upon some natural, intrinsic, or constitutional distinction, is too well settled to require citation of authority therefor. . . .

"If prayer can be regarded as practicing medicine and as an immunity, the act allows every person—man, woman, or child—such immunity, and the right to pray for the sick and afflicted, and that is the only way that disease can be treated by prayer. Whether such treatment avails anything or not is not for us to say; the privilege of practicing such treatment or such supplication is granted and allowed to all. The Scripture abounds with instances which, if accepted, tend to show that prayer in the treatment of disease was deemed efficacious and helpful. In the epistle of James it is said: 'Is any sick among you? let him call for the elders of the church; and let them pray over him, anointing him with oil in the name of the Lord.' To assume that treatment by prayer is less efficacious or more dangerous or harmful to the subject of the prayer by reason of the fact that the supplicant has

failed to devote two hundred and sixty hours to manipulative and mechanical therapy, or has neglected to study elementary bacteriology for a period of sixty hours, does violence to all legal or religious teaching. It is clear that it was the legislative intent to omit from the operation of the statute that class of persons engaged in the healing of the sick by the instrumentality of prayer; and, to our minds, it is likewise clear that a natural, intrinsic, and reasonable ground exists for making the exception. . . .

"It is impossible to dissociate diagnosis from the practice of the art of healing by any physical, medical, mechanical, hygienic, or surgical means. It is therefore competent for the legislature to permit only those persons who are proficient and who have been found to be educated up to certain standards to 'diagnose' ailments. The objection that those who profess to treat bodily afflictions by prayer are not required to be proficient in diagnosis, and that their exemption, under the law, is the extension of a favor to them which is withheld from others, is met by the obvious answer that diagnosis is no part of such treatment. Those who believe that divine power may be invoked by prayer for the healing of the body believe also that God is all-powerful. Patients receiving their ministrations know this, and therefore no fraud or injury may be practiced upon such persons by reason of any lack of skill by the healers in determining the nature of the diseases to be treated."

In a decision which reviewed many cases, the supreme court of Missouri said: "In the main, the cases regard diagnosis as the test to determine whether a practice or treatment is included in the terms 'medicine' and 'surgery.' This is a practical test" (State *vs.* Smith, 233 Mo. Rep. 241, 33 L. R. A. (N. S.) 179).

Another case of particular interest is People *vs.* Cole, 219 N. Y. Rep. 98, a decision by the highest court of the state of New York. This decision turned upon the construction of an act purporting to regulate the practice of medicine, which contained an artificial definition of that practice subject to certain exceptions. The defendant was prosecuted at the instance of the New York County Medical Society, though it was well understood that he was practicing Christian Science and had no intention of practicing medicine at all. The lower court and an intermediate court were overcome by medical arguments, but the court of appeals unanimously came to a decision that set the defendant free. The majority of the judges rested their judgment on a construction of the statute, but Chief Judge Bartlett added the following concurring opinion: "I concur in Judge Chase's construction of the statute. But I would go further. I deny the power of the Legislature to make it a crime to treat disease by prayer."

Partly, perhaps, because of Judge Bartlett's reputation as a jurist, but more largely because of the inherent justice and wisdom of his utterance, this opinion has been widely noticed and commended throughout the United States. It has received extraordinary notice and commendation from many classes of people. For instance, the *Brooklyn* (N. Y.) *Eagle* made the following editorial comment: "The court of appeals has ordered a new trial for Willis Vernon Cole, accused of 'practicing medicine without a license.' As the court of last resort throws out all the supposed theories of law on which Cole was convicted, this means victory in the state of New York for the Christian Scientists. . . . Chief Justice Bartlett went further than the majority of the court. He said, 'I deny the power of the legislature to make it a crime to treat disease by prayer.' Certainly the trend of sentiment, even among those who are not Christian Scientists, is toward the Bartlett view."

The following editorial comment, with introductory matter omitted, was made by *Bench and Bar* (New York), November, 1910:

"The case of the Christian Scientist is radically different. He does not operate upon the body at all. He even denies its existence. His theory is, that disease originates in the mind, and can be cured only by

treatment of the mind; and that even the mental concepts resulting in what is called disease are false and unreal, and can be dispelled by the apprehension of truth. A treatment based upon such theories cannot result in malpractice upon the body; and to a great extent the reasons which necessitate the licensing of the ordinary medical practitioner disappear.

"There remains, however, the argument from neglect —that the patient may resort to the Christian Science practitioner without benefit, whereas his case, if taken in time, might have been cured by more familiar methods. But how could the patient be forced to resort to the established school of medicine? Again the distinction in method is of vital importance. A believer in the use of drugs might resort to some unlicensed quack or harmful nostrum and receive serious injury. In his case there might have been protection in a law forbidding the quack to practice or preventing the sale of the nostrum. Christian Science, however, holds out no hope to such a person. His belief that the seat of the disease is in the body, and beyond the control of the mind, would prevent his resorting to it. On the other hand, if the patient did believe in the healing power of mind, and disbelieved in material methods, it is difficult to see how the legislature would protect him by forbidding the Christian Scientist to practice. He could not then resort to such a practitioner, but neither would he apply to the established school of medicine.

"The question raised by Chief Judge Bartlett seems

to us an interesting one, which is worthy of serious consideration. It will not arise in this state, however, unless the legislature amends the public health law in the particular which came under consideration in the Cole case. Whether or not the amendment might constitutionally be made, the only justification for such legislation is the protection of the public health. If that is not threatened by Christian Science practice, such practice ought not to be forbidden."

Thirty American legislatures have, either explicitly or by description, excepted Christian Science from their medical acts. A table of these statutory provisions will be found at the end of this paper. Absence of such a provision does not indicate that the practice of Christian Science is forbidden, for no such clause is necessary unless the statute covers more than the practice of medicine.

There are three decisions by the supreme court of Ohio that ought to be known to these commissions; one of them is commonly cited against Christian Science; but when they are considered together they support the view expressed in this paper.

In the case of State *vs.* Liffring, 61 Ohio St. Rep. 39, 46 L. R. A. 334, the supreme court of Ohio said with reference to an argument for a monopolistic construction of a medical act: "The

result of the view urged in support of the exception is that by this act the general assembly has attempted to determine a question of science and control the personal conduct of the citizen without regard to his opinion; and this is a matter in which the public is in no wise concerned. Such legislation would be an astounding denial of the commonly accepted views touching the right to personal opinion and conduct which does not invade the rights of others."

In the case of State *vs.* Gravett, 65 Ohio St. Rep. 289, 55 L. R. A. 791, the court held a statute unconstitutional because it plainly discriminated against osteopathy. The statute then examined required a greater preliminary education for an osteopath, who could get only a limited certificate, than it required for a physician, who could get a certificate for general practice. The court said: "It is quite obvious that this additional requirement could not have been made of those contemplating the practice of osteopathy because of the number and character of the subjects upon which they are to be examined, nor of the effect of their certificates, nor because of any consideration affecting the public health and safety which does not involve a scientific conclusion adverse to the efficacy of osteopathy. A conclusion of that character cannot be drawn by a body to which legisla-

tive power alone is given, and for whose members there is no prescribed qualification of education, knowledge, or intelligence. Authority to discriminate against osteopathy would imply authority to discriminate against any other school of medicine."

It was for these reasons that the supreme court of Ohio adjudged a statute to be unconstitutional. Yet in the case of State *vs.* Marble, 72 Ohio St. Rep. 21, 70 L. R. A. 835, the same court declined to find any discrimination against Christian Science in a statute that limited its practice for compensation to persons examined and licensed as medical doctors. The court said: "What Christian Science is we know not. . . . We fail to find anything in the act that discriminates against Christian Science. It does not provide for a special examination and limited certificate for the Christian Science practitioner, but he may obtain a certificate to practice medicine upon the same conditions as any other person, and there is nothing in the act requiring him to use the knowledge after he acquires it."

Now it is plainly unreasonable to require Christian Scientists, or any class of persons, to acquire knowledge for their practice that would be unnecessary or detrimental. This point is illustrated by the following cases, in which the highest courts of

Massachusetts and New York held statutes unconstitutional which limited the undertaking of funerals to persons examined and licensed as embalmers: Wyeth *vs.* Board of Health, 200 Mass. Rep. 474; People *vs.* Ringe, 197 N. Y. Rep. 143. A course of study and training in medicine and surgery would not be at all preparatory for the practice of Christian Science, but would be a positive detriment to this purely spiritual practice. Recognizing this fact, the court of appeals of Georgia, in the case of Bennett *vs.* Ware, 4 Ga. App. Rep. 89, 61 S. E. Rep. 546, declared that it would be absurd to require a Christian Science practitioner to prepare for and pass the examination of a medical board.

The supreme court of Ohio's ignorance of Christian Science was not a sufficient reason for its decision. It was the duty of that court to take judicial notice of Christian Science. By other courts it has been regarded as a well-recognized denomination of the Christian religion, the salient facts of which can be readily ascertained (Chase *vs.* Dickey, 212 Mass. Rep. 555, 567; Crawford *vs.* Nies, 220 Mass. Rep. 61, 64; Glover *vs.* Baker, 76 N. H. Rep. 393, 416-417; *In re* Estate of Orr, Ontario Law Reports, November, 1917). "Courts will take judicial notice of matters of history, of the contents of the Bible, of the fact that there are

religious sects, of the creed and general doctrines of each sect" (Hilton *vs.* Roylance, 25 Utah Rep. 129, 144; Weiss *vs.* District Board, 76 Wis. Rep. 177, 191). "We cannot avoid taking judicial notice of the fact that homeopathy as a distinct system, or school of medicine, with its professors and physicians, medicines and formulas, treatises and schools of instruction, *and with a fair share of intelligent persons for its patrons,* has existed in and been diffused through this state, and in and through other states and countries, for some time past " (White *vs.* Carroll, 42 N. Y. Rep. 161). In the same manner, the supreme court of Ohio should have known and should have held that the Ohio statute did discriminate against Christian Science by imposing an unreasonable condition on its practice. Nevertheless, the failure of that court to hold the Ohio statute unconstitutional furnishes no evidence that such a statute is either just or wise; and it is probable, if not certain, that the judges composing the court were still of the opinion expressed in the Liffring and Gravett cases.

Of course the supreme court of Ohio was obliged to leave all questions within the bounds of reasonable discretion to the legislature. Moreover, the court probably felt obliged to assume that the statute was prepared and passed for its ostensible purpose. In other words, the court did

not feel at liberty to regard the statute, in its application to Christian Science practitioners, as a mere device to hinder their work by forbidding them to accept compensation for it. The editor of the *Journal of the Indiana State Medical Association* (June, 1917) stated what everybody knows, when he put the actual effect of the Ohio statute in the following words: "In Ohio it is illegal for Christian Science healers to accept compensation for their work."

It should be evident to all thinking people that an honest service does not become illegal by reason of compensation; and the Georgia court of appeals held in the case just cited: "It must be apparent that if the mere laying on of hands amounts to the practice of medicine in any sense, it is so without reference to fee or reward." Moreover, Mrs. Eddy, the Discoverer and Founder of Christian Science, has justly said: "Till Christian Scientists give all their time to spiritual things, live without eating, and obtain their money from a fish's mouth, they must earn it in order to help mankind with it. All systems of religion stand on this basis" (The First Church of Christ, Scientist, and Miscellany, p. 216).

With regard to freedom from unreasonable or unnecessary regulation the following propositions are submitted:

(1) Honest efforts to prevent or cure disease should be regulated only when and to the extent that regulation is necessary for the general welfare.

(2) The general welfare does not require regulation for any honest service offered in behalf of health unless its practice is dangerous.

(3) If any service for health needs to be regulated, the regulation provided should correspond to its character.

(4) The practice of the Christian religion in accordance with the New Testament does not need to be regulated by statute, and even the best statute that could be designed for this purpose would do more harm than good.

(5) The practice of Christian Science is the practice of pure and unadulterated Christianity, as this is understood by Christian Scientists, and they constitute a considerable body of sincere and intelligent people in many states and countries, including the province of Ontario and the state of Ohio.

(6) Christian Scientists choose to depend on the practice of their religion not only because they regard this as a moral and spiritual obligation, but because they regard the practice thereof as safer and more dependable than the practice of medicine and surgery.

(7) The Christian Science church now furnishes as much regulation for the practice of this religion as the public safety requires. The existence of this church organization and the safeguards it provides have been found practically sufficient for the general welfare.

For some of these propositions, argument or the citation of authority would be superfluous. For the others, the length of this paper will permit only a few additional citations. In the following cases the reasons for the decisions support the proposition that the general welfare does not call for the regulation of any service offered in behalf of health unless it is dangerous, and that the absence of danger, or less danger, may rightly distinguish one service from another so far as regulation is concerned: Crane *vs.* Johnson (heretofore cited); *Ex parte* Dickey, 144 Cal. Rep. 234, 66 L. R. A. 92; Bergman *vs.* Bond, 14 Manitoba Law Rep. 503; People *vs.* Smith, 108 Mich. Rep. 527, 66 N. W. Rep. 382.

In the case last cited (People *vs.* Smith) the supreme court of Michigan applied the proposition just cited concretely and emphatically as follows: "Unless the emery wheel is dangerous to health, there is no necessity, and consequently no power to regulate it." Such reasoning is entirely applicable to the present subject, for Christian Science is beneficial to health as well as morals; and it is not dangerous. The beneficial results of Christian Science, though not fully known to all men, are becoming generally known; and as Charles T. Howard, M.D., of Boston, said in the *New England Medical Gazette* for July, 1917,

"No one to-day denies that many people whom we doctors have failed to cure have found benefit from Christian Science."

The following cases, all of which have been heretofore cited in this paper, support the proposition that if any service needs to be regulated the regulation should correspond to the nature of the service: Hayden *vs.* State; Nelson *vs.* State Board; State *vs.* McKnight; Eastman *vs.* State; State *vs.* Smith; People *vs.* Jordan; Wyeth *vs.* Board of Health; People *vs.* Ringe; and Bennett *vs.* Ware.

The following cases, all of which except the last have been cited, directly support the proposition that the practice of Christian Science does not need to be regulated by statute: Crane *vs.* Johnson; People *vs.* Jordan; Louisiana State Board *vs.* Charpentier; People *vs.* Cole; and People *vs.* Vogelgesang, 221 N. Y. 290. In the case last cited the New York court of appeals, after referring to statutes regulating the practice of medicine but containing exceptions in favor of the practice of Christian Science or other religion, concluded as follows: "Through all this legislation there runs a common purpose. The law exacts no license for ministration by prayer or by the power of religion. But one who heals by other agencies must have the training of the expert."

In the last two cases the highest court of the state of New York adopted a construction for the exception in the New York statute, and for all such exceptions, that limits them to their proper purpose and prevents fraud and abuse. Thus in the case of People *vs.* Cole the court said: "We think the exception in the statute in this state is broad enough to permit offering prayer for the healing of disease in accordance with the recognized tenets of the Christian Science church. It may be said that if the exception is so construed, it will lead to numberless persons assuming to cure diseases in the name of a church for the purpose of thereby maintaining a business and securing a livelihood. The religious tenets of a church must be practiced in good faith to come within the exception. When such practice is a fraud or pretense it is not excepted from the general prohibition. When wrong is practiced in the name of religion it is not protected by constitution or statute."

Speaking further of the same exception in the case of People *vs.* Vogelgesang, the same court also said: "The tenets to which the law accords freedom alike of practice and of profession are not merely the tenets, but the *religious* tenets, of a church. The profession and the practice of the religion must be itself the cure. The sufferer's mind must be brought into submission to the in-

finite Mind, and in this must be the healing. The operation of the power of Spirit must be not direct and remote, but direct and immediate. If that were not so, a body of men who claimed divine inspiration might prescribe drugs and perform surgical operations under cover of the law. While the healer inculcates the faith of the church as a method of healing he is immune. When he goes beyond that, puts his spiritual agencies aside and takes up the agencies of the flesh, his immunity ceases. He is then competing with physicians on their own ground, using the same instrumentalities and arrogating to himself the right to pursue the same methods without the same training."

To guard against misapprehension, it should be said that Christian Science cannot be practiced, to any considerable extent, by practitioners of medicine and surgery. The practice of one is spiritual, while the practice of the other is material; hence they are basically antithetical. Both call for knowledge: one for true knowledge of the real man, whose substance is Spirit, and of the divine law that is available through prayer; the other for the human knowledge of man as a material organism, and of such semblance of order, or the lack thereof, as can be found in the sequence of material phenomena. Christian Scientists concede

that the latter knowledge is relatively useful and important, but they also know that it does not qualify any one for the practice of Christian or Christian Science healing.

It should be added that Christian Science is not chiefly a system for the cure of disease. The cure of disease enters into its practice to the same extent and for the same reason that the cure of disease entered into the original practice of the Christian religion. In this and in every respect the scope and purpose of Christian Science are the same as the scope and purpose of original Christianity. Christian Science is simply the restoration of the teaching and practice of pure and unadulterated Christianity.

These facts are gaining general recognition. Thus the Rev. Lewis D. Steckel said in *The Reformed Church Review* for April, 1917:

"Christian Science made its appearance about fifty years ago. It has by this time found foothold, not in every locality but in nearly every country of the civilized world. This it has done not by any spectacular demonstrative means, but by the calm use of reason and persuasion. This is worthy of notice because since the reformation well-nigh all new sects have propagated themselves by means quite different from this. Whatever else one may think of Christian Science no one can accuse it of any fanaticism, or even

a tendency in that direction. . . . Christian Science is something which the Christian Scientists claim to have reintroduced and rediscovered. That they have succeeded I claim is something which can no more be successfully disputed. If any man still persists in disputing it he must be regarded as one who is not posted as to the current events of the day. I put it in the form of a reintroduction and rediscovery. For nothing stands out more conspicuously in the days of our Saviour in the flesh, and in a few centuries following, than the healing of diseases. In those days the healing part was an inseparable concomitant included in the means of establishing the kingdom of our Lord. It must therefore be regarded as a practice once in vogue but which by degrees ceased to be, as well as ceased to be believed in. . . . Whenever anything becomes so well established and proven as Christian healing, it should influence us all, at least in so far, to take heed to the apostle Paul's advice to 'prove all things: hold fast that which is good.' "

No legislature has ever enacted a law for the avowed purpose of forbidding or even restricting the practice of Christian Science. In Ohio and in the few other states where restrictive statutes have been passed, indirect means have been adopted. It can be said also that every such statute, in its application to the practice of Christian Science, has been neither respected by the public nor enforced by public officers. The ex-

planation is, that there is a natural and indestructible difference between reliance on prayer, or the practice of religion, and reliance on any material or human dependence, and this difference is one that is acknowledged and respected by the best people of every community. Hence this distinction, even though it has not always been regarded, has survived nevertheless; it has continued and will continue fairly and justly to invite the recognition of all persons who draft, enact, or construe human laws.

At the end of this long paper I wish to say, as I intimated at the outset, that the adverse comments on the practice of medicine which it contains constitute a very moderate and restrained selection from among the materials available, and that the discussion thereof has been kept clearly within the scope of the issues raised in Ohio and Ontario by the medical organizations of those states. Christian Scientists are not interested in the imperfections of medical theory or practice. They are interested in the divine Principle of their own practice, and in perfecting themselves for this practice. Moreover, they are entirely willing, and even desirous, that all other sincere endeavors to promote human welfare should be not only allowed but encouraged. Surely there is much to be done before all people attain abundant and enduring life.

TABLE OF STATUTORY PROVISIONS

EXHIBIT SHOWING WHERE THE LAWS REGULATING THE PRACTICE OF MEDICINE EXPRESSLY RECOGNIZE THE RIGHTS OF CITIZENS WHO MAY PREFER THE PRACTICE OF CHRISTIAN SCIENCE OR OTHER RELIGION.

(Compiled December 1, 1917)

NOTE—The absence of such a provision does not indicate that the practice of Christian Science is forbidden, for no saving clause is necessary unless the statute covers more than the practice of medicine.

ALASKA.—"This act shall not apply to . . . the practice of the religious tenets of any church."

ARIZONA.—"Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery or osteopathy, or any other system or mode of treating the sick or afflicted, or to interfere in any way with the practice of religion; provided that nothing herein shall be held to apply to or to regulate any kind of treatment by prayer; and provided further, that all sanitary laws and regulations regarding contagious and infectious diseases, applicable to practitioners of medicine shall be held to apply equally to the practice of any system or mode of treating the sick or afflicted."

ARKANSAS.—The State Board of Health "shall not regulate the practice of medicine or healing, nor interfere with the right of any citizen to employ the practitioner of his choice."

CALIFORNIA.—"Nor shall this act be construed to regulate, prohibit or apply to any kind of treatment by prayer, nor to interfere in any way with the practice of religion."

CANAL ZONE.—(Executive order by the President of the United States.) "Provided, That nothing in this order shall be construed to prohibit (a) the practice of the religious tenets of any church in the ministration of the sick or suffering by

mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided that such sanitary laws, orders, rules, and regulations as now are, or hereafter may be, in force in said Canal Zone are complied with."

COLORADO.—"Nothing in this act shall be construed to prohibit . . . the practice of Christian Science with or without compensation."

CONNECTICUT.—"This chapter shall not apply to any person practising . . . Christian Science."

FLORIDA.—(Part of an act taxing certain vocations.) "Provided that nothing in this clause shall be construed as affecting the members of any Christian denomination who pray for the recovery of the sick."

GEORGIA.—"Nothing in this act shall be construed to prohibit . . . the practice of the religious tenets or general beliefs of any church whatsoever."

HAWAII.—"And further provided that nothing herein contained shall apply to so-called Christian Scientists so long as they merely practise the religious tenets of their church without pretending a knowledge of medicine or surgery; provided, that the laws and regulations relating to contagious diseases are not violated."

ILLINOIS.—"And this act shall not apply to . . . any person who ministers to or treats the sick or suffering by mental or spiritual means, without the use of any drug or material remedy."

INDIAN TERRITORY.—The act of Congress which continued in force until the end of the territorial government recognized Christian Science by name.

KANSAS.—"But nothing in this act shall be construed as interfering with any religious beliefs in the treatment of diseases; provided, That quarantine regulations relating to contagious diseases are not infringed upon."

KENTUCKY.—"But this act shall not apply to the practice of Christian Science."

LOUISIANA.—"Nothing in this act, however, shall be construed to prohibit the practice of Christian Science or the religious tenets of any church whatsoever."

MAINE.—"The seven preceding sections shall not apply to persons practicing . . . Christian Science."

"Nothing in this act shall be construed to empower or authorize the State Department of Health or its representative to interfere in any manner with the individual's right to select the physician or mode of treatment of his choice, providing that sanitary laws, rules, and regulations are complied with."

MASSACHUSETTS.—"The provisions of the eight preceding sections shall not be held to discriminate against any particular school or system of medicine and . . . shall not apply to persons practicing . . . Christian Science."

MICHIGAN.—"This act shall not apply to . . . persons who confine their ministrations to the sick or afflicted to prayer and without the use of material remedies."

MONTANA.—"Nothing in this act shall be construed or operate so as to interfere in any way with the exercise of the child's or parent's religious belief as to examination for, or in the treatment of, diseases; provided that quarantine regulations relating to contagious or infectious diseases are not infringed upon."

NEVADA.—Act requiring medical examination of school children provides "any child shall be exempt from the examination herein provided upon written statement from his or her parents or guardian that they object to the same."

NEW HAMPSHIRE.—"This act shall not be construed so as to interfere in any way with the practice of those who endeavor to prevent or cure disease or suffering by spiritual means or prayer."

NEW JERSEY.—"The prohibitory provisions contained in this act as amended shall not apply to the ministration to, or treatment of, the sick or suffering by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug or material remedy."

NEW MEXICO.—"The laws of this state which regulate the practice of medicine and surgery shall not be construed to affect or limit in any way the practice of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means. Provided: This act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state."

NEW YORK.—"This article shall not be construed to affect . . . the practice of the religious tenets of any church."

NORTH CAROLINA.—"The provisions of this section . . . shall not apply to . . . Christian Scientists."

NORTH DAKOTA.—"Nothing in this act, however, shall be construed . . . to prohibit the practice of Christian Science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion or healing, provided that the persons administering or making use of or assisting or prescribing such do not prescribe or administer drugs or medicines nor perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians or surgeons."

OKLAHOMA.—"Nothing in this act shall pertain to any system of religion."

SOUTH DAKOTA.—Certain sections of the act "shall not apply to Christian Scientists as such, who do not practice medicine, surgery, or obstetrics by the use of any material remedies or agencies."

TENNESSEE.—"Nothing in this section shall be construed to apply . . . to Christian Scientists."

UTAH.—"Nor shall anything in this act be construed to apply to those who heal only by spiritual means without pretending to have a knowledge of the science of medicine."

VERMONT.—"The provisions of this chapter . . . shall not apply to persons who merely practise the religious tenets of their church without pretending a knowledge of medicine or surgery."

VIRGINIA.—"Nothing in this act shall be construed to affect . . . or to limit in any way . . . the practice of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided sanitary laws are complied with."

WASHINGTON.—"Nor shall this chapter be construed to discriminate against . . . any system or mode of treating the sick or afflicted, or to interfere in any way with the practice of religion; provided, that nothing herein shall be held to apply to or to regulate any kind of treatment by prayer."

WISCONSIN.—"None of the provisions of this act or the laws of this state regulating the practice of medicine or healing shall be construed to interfere with the practice of Christian Science or with any person who administers to or treats the sick or suffering by mental or spiritual means, nor shall any person who selects such treatment for the cure of disease be compelled to submit to any form of medical treatment."

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